

**IN THE COURT OF APPEALS**  
**FIRST APPELLATE DISTRICT OF OHIO**  
**HAMILTON COUNTY, OHIO**

IN RE: ANTWON C.	:	APPEAL NO. C-100136
	:	TRIAL NO. 05-14749X
	:	<i>JUDGMENT ENTRY.</i>
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	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.<sup>1</sup>

In 2005, appellant Antwon C. was adjudicated delinquent for committing an act that, if committed by an adult, would have constituted gross sexual imposition. The trial court suspended Antwon’s commitment to the Department of Youth Services (“DYS”), placed him on probation, and ordered him to complete the residential treatment program at Hillcrest Training School (“Hillcrest”) in Cincinnati. The court continued the case for a juvenile-offender-registrant classification hearing. Before the hearing could take place, Antwon fled to Florida and a warrant was issued for his arrest.

Shortly after he arrived in Florida, Antwon was involved in an incident for which he was committed to a residential facility for two years. After finishing the program, Antwon was placed on “conditional release” for two years in Florida. He finished high school, obtained employment, and enrolled in college.

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<sup>1</sup> See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

In June 2008, Antwon was stopped in Georgia for speeding. The outstanding warrant was discovered and Antwon was returned to Ohio. After a July 2008 hearing, the juvenile court designated Antwon as a Tier II sex offender. An August 2008 hearing resulted in Antwon's commitment to DYS. Antwon appealed his adjudication and his sex offender classification in the case numbered C-080847. While his appeal was pending, Antwon was released from DYS on March 11, 2009.

On June 5, 2009, we affirmed Antwon's adjudication, but we reversed the trial court's judgment classifying Antwon as a Tier II sex offender because the trial court had erroneously believed that the Tier II classification was mandatory, and because the trial court did not wait until Antwon was released from DYS to hold the classification hearing, as required by R.C. 2152.83(A)(1).

After Antwon was released from DYS, he was incarcerated in Indiana on bank robbery charges. He also had pending ten felony counts in Hamilton County. Antwon was represented in the Hamilton County Juvenile Court proceedings by the Ohio Public Defender until August 26, 2009, when the trial court granted the Ohio Public Defender's motion to withdraw and appointed new counsel. The record indicates that the Ohio Public Defender was aware that Antwon was being held in Indiana. The juvenile court magistrate notified Antwon's new counsel that a sexual offender classification hearing would take place on September 29, 2009.

Antwon's counsel appeared on September 29, 2009. The magistrate continued the hearing, but noted that it had to take place before Antwon turned 21 on November 17, 2009. The hearing was held on November 4, 2009. Antwon's counsel had received notice of the hearing date. The magistrate indicated on the record that Antwon was not present because Indiana had refused to allow Antwon to be transported to Ohio for the hearing. Antwon's counsel objected to the hearing

going forward in Antwon's absence. Following the hearing, the magistrate classified Antwon as a Tier II offender. The trial court overruled Antwon's objections to the magistrate's decision. Antwon has now appealed, raising four assignments of error for our review.

The first assignment of error alleges that the trial court violated Antwon's due-process rights by holding a sexual-offender classification hearing and designating him as a Tier II sex offender in his absence.

Antwon first argues that his right to due process was violated because he did not personally receive notice of the hearing. Juv.R. 20(B) provides that "[w]henver under these rules or by an order of the court service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service is ordered by the court upon the party. Service upon the attorney or upon the party shall be made in the manner provided in Civ.R. 5(B)." Sex-offender classification proceedings are civil in nature.<sup>2</sup> "Civ.R. 5(B) provides that, if a party is represented by an attorney of record in the proceedings, service shall generally be made on the attorney."<sup>3</sup> Pursuant to Civ.R. 5(B), "absent an express order by the court indicating otherwise, if a party is represented by an attorney of record, service, when required, should be made upon that attorney."<sup>4</sup>

Antwon's attorney received notice of and appeared at the hearing. The trial court noted that the state of Indiana had refused to allow Antwon to be transported to Ohio for the hearing. Antwon's attorney represented him at the hearing, objected

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<sup>2</sup> See *Sewell v. State*, 181 Ohio App.3d 280, 2009-Ohio-872, 908 N.E.2d 995; *State v. Gowdy*, 88 Ohio St.3d 387, 2000-Ohio-355, 727 N.E.2d 579; *State v. Cook* (1998), 83 Ohio St.3d 404, 700 N.E.2d 570.

<sup>3</sup> See *Evans v. Evans*, 5th Dist. No. 2007CA00034, 2008-Ohio-2640, at ¶21, citing *Bierce v. Howell*, 5th Dist No. 06 CAF 05 0032, 2007-Ohio-3050, at ¶20.

<sup>4</sup> See *Roberts v. Skaggs*, 176 Ohio App.3d 251, 2008-Ohio-1954, 891 N.E.2d 827, at ¶11.

to the hearing going forward in Antwon's absence, and argued against the Tier II classification.

Antwon also argues that the trial court erred in classifying him as a Tier II sex offender in his absence. We stated in *State v. Phillips*<sup>5</sup> that "the overriding principle to be applied is that neither in criminal nor in civil cases will the law allow a person to take advantage of his own wrong." Antwon's absence resulted from his own actions, which had caused his incarceration for crimes in Indiana. The law will not allow Antwon to take advantage of his own wrong to avoid classification as a sexual offender. The first assignment of error is overruled.

Antwon's second assignment of error alleges that he was denied the effective assistance of counsel.

This court has not yet decided whether juvenile sex offenders are entitled to appointed counsel in Senate Bill 10 tier-classification proceedings, and that issue has not been raised by the parties. Because the public defender accepted representation of Antwon, we apply the test for ineffective assistance of counsel set forth in *Strickland v. Washington*<sup>6</sup> and *State v. Bradley*.<sup>7</sup> To prevail on a claim of ineffective assistance of counsel, Antwon must show that his trial counsel's performance was deficient and that the deficient performance was so prejudicial that he was denied a reliable and fundamentally fair proceeding.<sup>8</sup> To show that he has been prejudiced, Antwon must "prove that there exists a reasonable probability that, were it not for counsel's errors, the result" of the hearing "would have been different."<sup>9</sup> Following a review of the record, we hold that Antwon has not shown that his counsel violated an

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<sup>5</sup> (1972), 34 Ohio App.2d 217, 299 N.E.2d 286.

<sup>6</sup> (1984), 466 U.S. 668, 104 S.Ct. 2052.

<sup>7</sup> (1989), 42 Ohio St.3d 136, 538 N.E.2d 373.

<sup>8</sup> See *Strickland v. Washington*, supra, at fn. 6; *State v. Bradley*, supra, at fn. 7.

<sup>9</sup> See *State v. Bradley*, supra, at fn. 7.

essential duty that resulted in prejudice to him. The second assignment of error is overruled.

The third assignment of error alleges that the trial court erred in classifying Antwon a Tier II offender without ordering that Antwon be present for the hearing and without considering the factors set forth in R.C. 2152.83(D).

Antwon first argues that the trial court erred in classifying him as a Tier II offender in his absence. As we noted under Antwon's first assignment of error, Antwon was absent from the classification hearing as a result of his own actions. The law will not allow Antwon to take advantage of his own wrong to avoid classification as a sex offender.

Antwon also argues under his third assignment of error that the trial court erred in designating him as a Tier II offender without considering the factors set forth in R.C. 2152.83(D). Because Antwon was 16 years old when he committed the offense, the trial court was required to classify him as a juvenile offender registrant under R.C. 2152.83(A)(1) and (2). The trial court is not required to consider the R.C. 2152.83(D) factors in a classification hearing held pursuant to R.C. 2152.83(A) and 2152.831. The third assignment of error is overruled.

Finally, Antwon argues that the trial court abused its discretion in classifying him as a Tier II sex offender. Antwon was 16 years old at the time of his offense, and his victim, who was the biological daughter of his foster mother, was 12. Antwon engaged in sexual intercourse with the victim on four occasions over a two-week period. On one occasion, he gave the victim drugs before engaging in sexual intercourse with her. Antwon absconded from his original placement and fled to Florida, where he was involved in an incident that resulted in his commitment to a residential facility for two years. Antwon was returned to Hamilton County, where

he was committed to and ultimately released from DYS. After his release from DYS, Antwon was arrested in Indiana for bank robbery. He also has ten felony charges pending in Hamilton County. Following a review of the record, we hold that the trial court's decision classifying Antwon as a Tier II sex offender was not unreasonable, arbitrary, or unconscionable.<sup>10</sup> The third assignment of error is overruled.

Antwon's fourth assignment of error is overruled. We held in *Sewell v. State*<sup>11</sup> that the tier-classification and registration provisions of Senate Bill 10 are remedial and not punitive, and that they do not have the effect of converting a remedial statute into a punitive one. Because Senate Bill 10's classification and registration provisions are civil and remedial, not criminal, they do not violate the constitutional ban on ex post facto laws. Further, we held in *Sewell* that the retroactive application of Senate Bill 10's tier-classification and registration requirements does not violate the prohibition on retroactive laws contained in Section 28, Article II of the Ohio Constitution.<sup>12</sup>

Therefore, the judgment of the trial court classifying Antwon C. as a Tier II sex offender is affirmed. Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

**CUNNINGHAM, P.J., SUNDERMANN and HENDON, JJ.**

*To the Clerk:*

Enter upon the Journal of the Court on January 14, 2011  
per order of the Court \_\_\_\_\_.  
Presiding Judge

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<sup>10</sup> See *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 450 N.E.2d 1140.

<sup>11</sup> See *Sewell v. State*, supra, at fn. 2.

<sup>12</sup> See *id.*